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No. 88-353

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1988

COMMONWEALTH OF MASSACHUSETTS,
Petitioner

v.

LEO A. DEROSIA,
Respondent

PETITION FOR DENIAL OF WRIT OF CERTIORARI TO THE SUPREME COURT OF THE UNITED STATES FOR LEO A. DEROSIA

LEO A. DEROSIA
By his Attorney

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REASONS FOR DENYING THE WRIT

I. THE DECISION BELOW WAS CORRECT IN THAT THE DEFENDANT HAS A REASONABLE EXPECTATION OF PRIVACY IN HIS MOTHER'S HOME. THIS IS NOT IN CONFLICT WITH DECISIONS OF THIS COURT.

The Petitioner's first argument for granting the writ of certiori is that the Supreme Judicial Court of Massachusetts failed to address whether Respondent had

a reasonable expectation of privacy in his mother's home, and therefore, the decision in Commonwealth v. Derosia, 402 Mass 284 (1988) is in opposition to other decisions of this court.

The primary case cited by the petitioners in support of their position is Rakas v. Illinois, 439 U.S. 128 (1978). In this case the criminal defendants were passengers in an automobile that was stopped and searched. A rifle was found under the front seat and shells were found in the glove box. The defendants had neither a property nor a possessory interest in the automobile and asserted no interest in the rifle or shells found therein. The court held that the fact that the criminal defendants were "Legitimately in the car, with the permission of the owner, was, in itself, not enough to give them a ligitimate expectation of privacy in the particular areas of the

automobile searched".

In the case at hand, Derosia was in his mother's home when he answered a knock at the door and was arrested and searched by members of the Gardner Police Department. A handgun was found in the waistband of his pants. Katz v. United States, 389 U.S. 347 (1967) developed the justified expectation of privacy approach to the Fourth Amendment cases. Other than one's own home, it is hard to imagine a place where the expectation of privacy is greater than that of one's parents' home. Rakas v. Illinois, at 142, states that... "The phrase legitimately on the premises coined in Jones v. United States, 362 U.S. 257 (1960) creates too broad a gauge for measurement of Fourth Amendment rights". However, this court goes on in Rakas v. Illinois, to state that Jones does stand for "...the unremarkable proposition that a person can have a legally sufficient interest in a place other than his own home

so that the Fourth Amendment protects him from unreasonable governmental intrusion into that place".

The foundation of the Fourth Amendment jurisprudence is that one's legitimate expectations of privacy are most pronounced in the home. See Payton v. New York, at 445 U.S. 573 (1980) at 586 where this court held that a warrantless arrest within a private residence is "Presumptively unreasonable".

It would seem that the opinion of the Supreme Judicial Court in Derosia is in agreement with Rakas v. Illinois, not in conflict with it. Here, Derosia asserts his Fourth Amendment rights as a result of a warrantless arrest and search of his person while he was visiting at his mother's home. Unlike the defendants in Rakas, Derosia claims ownership in the property seized.

Rawlings v. Kentucky, 448 U.S. 98

(1980) and United States v. Salvucci, 448 U.S. 83 (1980) are not germane to the case at hand. In Rawlings, drugs belonging to Rawlings were found in another's purse and this court said there was no legitimate expectation of privacy in the purse to allow Rawlings to challenge the validity of the search. In Salvucci, the defendants were charged with possession of stolen mail. The checks that formed the basis of the charge had been seized during a search conducted pursuant to a warrant for the apartment rented by one of the defendant's mother. It appears that the defendant was not present at the apartment when the search was made and that the search was pursuant to a warrant, facts notably different from those in Derosia.

In like manner, the facts of Derosia are different than those found in United

States v. Santana, 427 U.S. 38, (1976). In Santana the defendant was standing in the open doorway of her house when the police arrived. Derosia was behind the closed door of his mother's home which was only opened as a result of actions initiated by the police.

II. WHAT VALIDITY TO GIVE A FOREIGN WARRANT WITHIN MASSACHUSETTS IS A MATTER OF STATE LAW, NOT FEDERAL CONSTITUTIONAL LAW.

The fact that the Supreme Judicial Court rejected the Commonwealth's argument that the New Hampshire capias satisfied the Fourth Amendment warrant requirement is not an appropriate reason to grant certiorari. What validity to give to a foreign warrant within Massachusetts is a matter of state law, not federal law. In Massachusetts, the power to issue warrants is controlled by statute. (Chapter 218, Section 32 of the Massachusetts General laws authorizes

District Courts to receive complaints and issue warrants. Chapter 276, Section 22 governs the procedure to be followed. These are augmented by Chapter 218, Section 33, which provides that "a clerk (or) assistant clerk...may receive complaints, administer to complainants the oath required thereto, and issue warrants").

There is no statutory authority and no Massachusetts case law giving an out of state capias the same jurisdictional value as a warrant issued pursuant to the Massachusetts statutory law. In People v. Wolgemuth, 69 Illinois 2d 154, 370 N.E. 2d 1067, (1977), cert denied 436 U.S. 908 (1978), the Illinois Supreme Court ruled that an Iowa warrant could be used to make a valid in-home arrest in Illinois. However, Illinois had a statute that specifically authorized arrests on warrants from other jurisdictions.

In a similar case, State v. Reasoner,

154 Ariz. 377, 742 P. 2d 1363 (Ariz. App. 1987), the Arizona Court gave credence to a Colorado warrant in arresting Reasoner within his own home. It is unclear from Reasoner what the statutory requirements are in Arizona for the issuance of warrants and what effect, if any, Arizona statutes give to warrants of a foreign sovereignty. Perhaps the Arizona court has gone too far and has entered territories belonging to the Legislative Branch of Government.

In State v. Bradley, 106 Idaho 358, 679 P. 2d 635 (1983), cert denied 464 R.S. 1041 (1984) this very issue was before this court and the writ of certiori was denied.

III. THE COURT BELOW APPLIED THE APPROPRIATE STANDARD AS TO EXIGENT CIRCUMSTANCES

The Supreme Judicial Court's conclusion that there were no exigent circumstances to justify a warrantless entry

into Derosia's mother's home was correct. A review of the facts as outlined in the Petition prepared by the Commonwealth (See Commonwealth's brief p. 3) provides evidence that the police had ample time to obtain an arrest and search warrant for Derosia. The police had knowledge that Derosia was at his mother's home at least an hour and a half prior to the defendant's arrest. Also, the police had spoken with an assistant clerk about the situation. A police officer was dispatched to watch the defendant's mother's home shortly after learning of Derosia's presence there, and there is no indication that Derosia even knew of the police presence. Upon his arrest, within his mother's home, the defendant offered no resistance. The guidelines suggested in Dorman v. United States, 435 F. 2d 385 (D.C. Cir. 1970) for determining whether exigent circumstances were present which would excuse the lack of a warrant, have been adopted

by the Supreme Judicial Court in Commonwealth v. Forde, 367 Mass 798, 329 N.E. 2d 717 (1975) and Commonwealth v. Pietras, 392 Mass 892, 467 N.E. 2d 1368 (1984).

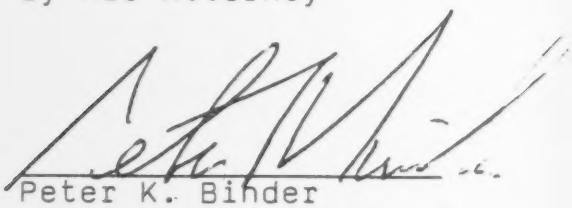
It must be assumed that these guidelines were reviewed by the Supreme Judicial Court when it concluded that "...there were no exigent circumstances to justify a warrantless entry into the dwelling of the defendant's mother". Commonwealth v. Derosia, 402 Mass 284, 522 N.E. 2d 408 (1988). Here petitioner has failed to frame an issue that could be made the basis of a writ of review.

CONCLUSION

For the foregoing reasons, the petition of writ of certiori to review the judgment of the Supreme Judicial Court of the Commonwealth of Massachusetts should be denied.

Respectfully submitted,

LEO A. DEROSIA,
By his Attorney



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